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14 CALIFORNIA, INC.

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LENSRAFTERS, INC. and EYEXAM OF
CALIFORNIA, INC.,

Plaintiffs,

v.

LIBERTY MUTUAL FIRE INSURANCE
COMPANY; EXECUTIVE RISK SPECIALTY
INSURANCE COMPANY; UNITED STATES
FIRE INSURANCE COMPANY; MARKEL
AMERICAN INSURANCE COMPANY and
WESTCHESTER FIRE INSURANCE COMPANY,

Defendants,

Case No.: C-07-2853 SBA

**PLAINTIFF LENSRAFTERS, INC.'S
OBJECTIONS AND RESPONSES TO
DEFENDANT UNITED STATES FIRE
INSURANCE COMPANY'S
REQUESTS FOR PRODUCTION OF
DOCUMENTS AND THINGS (SET
THREE)**

PROPOUNDING PARTY: Defendant United States Fire Insurance Company

RESPONDING PARTY: Plaintiff LensCrafters, Inc.

SET NO.: Three

1 Pursuant to Federal Rule of Civil Procedure 34, Plaintiff LensCrafters, Inc. ("LensCrafters")
2 hereby serves the following objections and responses to the United States Fire Insurance
3 Company's ("U.S. Fire") Requests for Production of Documents and Things to LensCrafters (the
4 "Requests").

5 **GENERAL OBJECTIONS**

6 1. LensCrafters objects to the definition of "YOU" and YOUR" as being overbroad,
7 vague and ambiguous, and to the extent the definition encompasses documents not in the
8 possession, custody or control of LensCrafters. LensCrafters will construe the terms "YOU" and
9 "YOUR" to mean LensCrafters, Inc. only.

10 2. LensCrafters objects to the definition of "CONCERNING" as overbroad, vague and
11 ambiguous.

12 3. LensCrafters objects to these Requests to the extent they seek information or
13 documents beyond the scope of discovery contemplated by the Federal Rules.

14 4. LensCrafters responds to these Requests on the basis of the best information
15 available at the time responsive materials are gathered, and within the limits and subject to the
16 objections set forth herein. A statement that documents will be produced in response to a particular
17 request does not mean that LensCrafters knows the documents to exist or to be in its possession.
18 Rather, the response means only that if such documents exist, if they are in the possession of
19 LensCrafters, and if they can be located through a diligent search of reasonable scope, they will be
20 produced.

21 5. LensCrafters has not yet completed its investigation of the facts related to this case
22 and has not completed discovery in this action. Thus, any production of documents in response to
23 these Requests is based on information presently known to LensCrafters and is given without
24 prejudice to LensCrafters' right to produce evidence of any subsequently discovered documents.

25 6. By objecting to, responding to, and/or providing documents in response to these
26 Requests, LensCrafters does not concede the relevancy or materiality of any particular request for
27 production or the subjects to which the Requests refer. LensCrafters' objections to, responses to,
28 and/or production of documents in response to any requests for production are made expressly

1 subject to, and without in any way waiving or intending to waive, any questions or objections as to
2 the competency, relevancy, materiality, privilege or admissibility of any document in any
3 proceeding (including any trial in this action).

4 7. LensCrafters has construed these Requests in a manner consistent with the Federal
5 Rules of Civil Procedure, as well as other applicable law.

6 8. LensCrafters objects to these Requests to the extent that they seek information
7 and/or documents protected from discovery by the attorney-client privilege, the work-product
8 doctrine, or other similar protection from production. LensCrafters will not produce any such
9 information and/or documents, and inadvertent disclosure by LensCrafters of such information
10 and/or documents shall not constitute a waiver of any privilege or any other ground for objecting to
11 discovery with respect to such information and/or documents, or of LensCrafters' rights to object to
12 the use of any such information and/or documents during this litigation or otherwise.

13 9. LensCrafters objects to these Requests to the extent they seek information or
14 documents that are privileged and protected from discovery pursuant to applicable privileges
15 related to settlement and mediation. LensCrafters will not produce any such information and/or
16 documents, and inadvertent disclosure by LensCrafters of such information and/or documents shall
17 not constitute a waiver of any privilege or any other ground for objecting to discovery with respect
18 to such information and/or documents, or of LensCrafters' rights to object to the use of any such
19 information and/or documents during this litigation or otherwise.

20 10. LensCrafters objects to these Requests to the extent that they seek confidential
21 and/or private information of LensCrafters' customers, the production of which would violate these
22 customers' right to privacy. LensCrafters will not produce any such information and/or documents,
23 and inadvertent disclosure by LensCrafters of such information and/or documents shall not
24 constitute a waiver of any privilege or any other ground for objecting to discovery with respect to
25 such information and/or documents, or of LensCrafters' rights to object to the use of any such
26 information and/or documents during this litigation or otherwise.

27 11. LensCrafters objects to these Requests to the extent that they seek information or
28 documents that are proprietary, commercially sensitive, trade secret, confidential, private, or

1 otherwise protected from disclosure and to the extent LensCrafters produces such document, it will
2 only do so subject to the April 18, 2008 Stipulation and Protective Order in this action.

3 12. LensCrafters objects to these Requests on the grounds that they are overly broad,
4 burdensome, oppressive, and seek information which is neither relevant nor reasonably calculated
5 to lead to the discovery of admissible evidence.

6 **RESPONSES TO REQUESTS FOR PRODUCTION**

7 **REQUEST FOR PRODUCTION NO. 45:**

8 ALL DOCUMENTS CONCERNING any CLAIM FORMS submitted by members of the
9 putative class in the *SNOW ACTION* pursuant to YOUR settlement in that action, including but not
10 limited to the CLAIM FORMS and any memoranda or other DOCUMENT analyzing those CLAIM
11 FORMS.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 45:**

13 LensCrafters incorporates its general objections as if fully set forth herein. LensCrafters
14 objects to this request as premature, as LensCrafters has not yet obtained the final number of
15 settlement claimants. LensCrafters further objects to this request on the grounds that disclosure of
16 information related to the settlement of the *SNOW ACTION* before that settlement is final may
17 prejudice LensCrafters by undermining the settlement. LensCrafters further objects on the basis
18 that the request seeks confidential and proprietary information, including private and confidential
19 information regarding LensCrafters' customers, the disclosure of which may violate the customers'
20 right to privacy. LensCrafters further objects to this request to the extent that it calls for
21 information protected by the attorney-client privilege, the work-product protection and the
22 settlement and mediation privileges. LensCrafters further objects to this request on the basis that it
23 seeks information that is neither relevant nor reasonably calculated to lead to the discovery of
24 admissible evidence.

25 **REQUEST FOR PRODUCTION NO. 46:**

26 ALL DOCUMENTS CONCERNING COMMUNICATIONS between YOU and any
27 administrator of any CLAIM FORMS submitted by members of the putative class in the *SNOW*
28 ACTION pursuant to YOUR settlement in that action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 46:

LensCrafters incorporates its general objections as if fully set forth herein. LensCrafters objects to this request as premature, as LensCrafters has not yet obtained the final number of settlement claimants. LensCrafters further objects to this request on the grounds that disclosure of information related to the settlement of the *SNOW ACTION* before that settlement is final may prejudice LensCrafters by undermining the settlement. LensCrafters further objects on the basis that the request seeks confidential and proprietary information, including private and confidential information regarding LensCrafters' customers, the disclosure of which may violate the customers' right to privacy. LensCrafters further objects to this request to the extent that it calls for information protected by the attorney-client privilege, the work-product protection and the settlement and mediation privileges. LensCrafters further objects to this request as overly broad, burdensome, and oppressive, vague and ambiguous as to the term "administrator of any CLAIM FORMS." LensCrafters further objects to this request on the basis that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 47:

ALL DOCUMENTS CONCERNING COMMUNICATIONS between YOU and the *SNOW ACTION* Plaintiffs regarding any CLAIM FORMS submitted by members of the putative class in the *SNOW ACTION* pursuant to YOUR settlement in that action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 47:

LensCrafters incorporates its general objections as if fully set forth herein. LensCrafters objects to this request as premature, as LensCrafters has not yet obtained the final number of settlement claimants. LensCrafters further objects to this request on the grounds that disclosure of information related to the settlement of the *SNOW ACTION* before that settlement is final may prejudice LensCrafters by undermining the settlement. LensCrafters further objects on the basis that the request seeks confidential and proprietary information, including private and confidential information regarding LensCrafters' customers, the disclosure of which may violate the customers' right to privacy. LensCrafters further objects to this request to the extent that it calls for information protected by the attorney-client privilege, the work-product protection and the

1 settlement and mediation privileges. LensCrafters further objects to this request on the basis that it
 2 seeks information that is neither relevant nor reasonably calculated to lead to the discovery of
 3 admissible evidence.

4 **REQUEST FOR PRODUCTION NO. 48:**

5 ALL DOCUMENTS CONCERNING the number of CLAIM FORMS submitted by
 6 members of the putative class in the *SNOW ACTION* who elected a cash payment pursuant to
 7 YOUR settlement in that action.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 48:**

9 LensCrafters incorporates its general objections as if fully set forth herein. LensCrafters
 10 objects to this request as premature, as LensCrafters has not yet obtained the final number of
 11 settlement claimants. LensCrafters further objects to this request on the grounds that disclosure of
 12 information related to the settlement of the *SNOW ACTION* before that settlement is final may
 13 prejudice LensCrafters by undermining the settlement. LensCrafters further objects on the basis
 14 that the request seeks confidential and proprietary information, including private and confidential
 15 information regarding LensCrafters' customers, the disclosure of which may violate the customers'
 16 right to privacy. LensCrafters further objects to this request to the extent that it calls for
 17 information protected by the attorney-client privilege, the work-product protection and the
 18 settlement and mediation privileges. LensCrafters further objects to this request on the basis that it
 19 seeks information that is neither relevant nor reasonably calculated to lead to the discovery of
 20 admissible evidence.

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 22 Dated: August 25, 2008

HELLER EHRMAN LLP

23
 24 By 

25 Darren S. Teshima

26 Attorneys for Plaintiffs
 27 LENSRAFTERS, INC. and EYEXAM OF
 28 CALIFORNIA, INC.